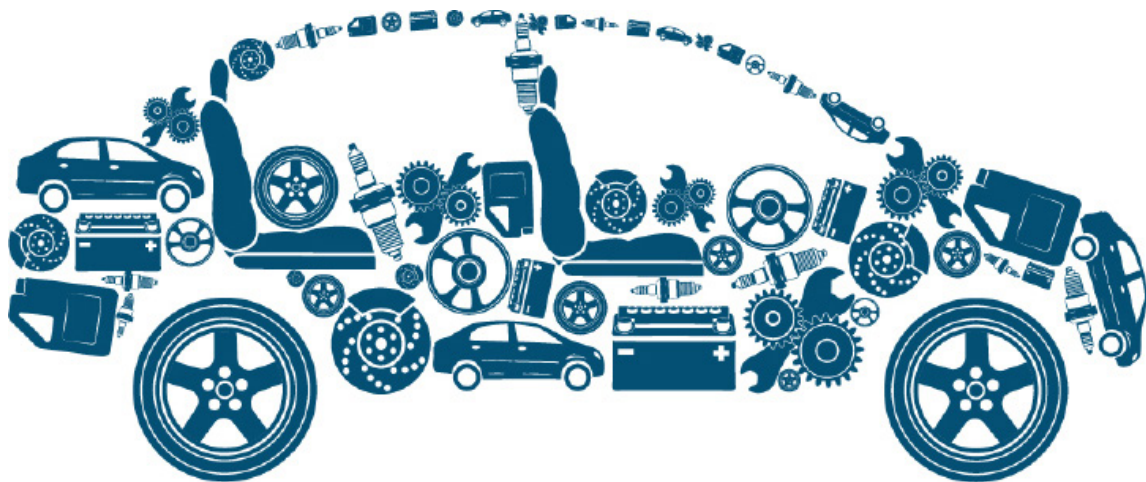




# OEM North American Production Purchase Order Contract Terms and Conditions Comparative Analysis

## 17<sup>th</sup> Edition



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## INTRODUCTION

Welcome to the *OEM North American Production Purchase Order Contract Terms and Conditions Comparative Analysis* published by the Original Equipment Suppliers Association (“OESA”) (*revised September 2022*). This document is a comparative analysis of general contract Terms and Conditions issued by automotive original equipment manufacturers in North America (“OEMs”) for production parts purchased in North America. Although some OEMs or associated entities may have more than one version of their Terms and Conditions, OESA has identified and analyzed the most broadly used Terms and Conditions for purchases in the North American market for each OEM. The specific Terms and Conditions analyzed and compared are as follows:

BMW (2014)	BMW Group International Terms and Conditions for the Purchase of Production Materials and Automotive Components (Status 2/28/2014)
BMW (2018)	BMW Group International Terms and Conditions for the Purchase of Production Materials and Automotive Components (Version 31.03.2018) (Translation updated 2018.07.18)
FCA US (2021)	FCA Production and Mopar Purchasing General Terms and Conditions (1/2021)
FCA US / Stellantis (2022)	FCA US (1/2021) & Stellantis Global General Terms and Conditions (12/2021)
Ford (2004)	Ford Motor Company and Affiliates — Production Purchasing Global Terms and Conditions (PPGTC 1/1/2004)
Ford (2021)	Ford Motor Company and Affiliates — Production Purchasing Global Terms and Conditions (PPGTC 7/1/2021)
General Motors	General Terms and Conditions for Direct Material, CCA and Tooling Purchases (Revised 2/2014)
Honda	North America Purchase Order Terms and Conditions (revised 10/22/2018)
Hyundai	Hyundai Motor Manufacturing Alabama, LLC — Parts Development General Terms and Conditions (Rev. 1 110103)
Kia <sup>1</sup>	Kia Motors Manufacturing Georgia, Inc. — Parts Development Agreement Rev. 2/2010
Lucid	Lucid USA, Inc. General Terms and Conditions For Prototype and Production Parts and Services
Mercedes	Mercedes-Benz U.S. International, Inc. — Master Terms Direct Purchasing (January 2018)

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<sup>1</sup> The Kia terms are, with limited exceptions, identical to the Hyundai terms. Therefore, the Comparative Analysis of the Kia terms is limited to “Same as Hyundai” unless there are material differences.

Nissan	Nissan North America, Inc. — Master Purchase Agreement, dated 12/19/2003
Rivian	Rivian General Terms and Conditions of Production Purchase (Rev. TC6)
Toyota (2009)	Toyota Motor Engineering & Manufacturing North America, Inc. — Terms and Conditions (4/1/2009)
Toyota (2021)	Toyota Motor Engineering & Manufacturing North America, Inc. — Terms and Conditions (10/1/2021)
Volkswagen	Volkswagen Group of America Chattanooga Operations, LLC — Production Terms and Conditions of Purchase (Last revised 12/18/2020)
Volvo	Volvo Cars Production Material Global Terms and Conditions (5/1/2018)
OESA	OESA Updated Model General Terms and Conditions (2022)

**Note 1:**

*BMW issued new terms in 2018. It is unclear from the face of the terms when they will become effective, so we have included analyses of both the 2014 and 2018 terms.*

*The 2004 Ford Terms remain applicable to disputes arising out of purchase orders issued before 7/1/21.*

*The 2009 Toyota Terms remain applicable to disputes arising out of parts shipped prior to 10/1/21.*

*The 2021 FCA Production and Mopar Purchasing General Terms and Conditions (1/2021) (“FCA North American Terms”) remain applicable for POs arising out of RFQs issued before 1/1/2022. Thereafter, the FCA / Stellantis (2022) Terms apply. The FCA / Stellantis (2022) Terms consist of the same 2021 FCA North American Terms together with newly issued Stellantis Global Terms and Conditions (“Stellantis Global Terms”). If the two terms conflict or are inconsistent, the FCA North American Terms prevail.*

**Note 2:**

*For purposes of the Comparative Analysis, the term “OEM” is used to indicate the “buyer” in the analysis as referenced in the OESA Draft Model General Terms and Conditions.*

The purpose of this comparative analysis is to provide OESA members a ready reference to understand the standard Terms and Conditions all OEMs routinely incorporate into Purchase Orders, and to highlight those areas most critical to today’s industry environment. It does not purport to be the “last word” on each of the topics covered. It can neither cover all of the relevant contract law and other legal principles, nor capture every clause and nuance of the OEM’s standard Terms and Conditions. However, it is OESA’s hope that the analysis will provide a useful reference guide and starting point for risk assessment and contract and dispute negotiations. The comments in the body of the comparative analysis are intended to highlight critical areas and hot-button issues in today’s Supplier/OEM relationships.

**About OESA**

The Original Equipment Suppliers Association (OESA) champions the business interests of automotive suppliers. OESA addresses issues of common concern, fosters collaboration throughout the supply chain and advocates on behalf of the supplier community. Through industry analysis, topical events and an active peer group council, the association helps suppliers stay informed and make mission-critical business decisions. OESA is one of four divisions of the Motor & Equipment Manufacturers Association (MEMA).

## **The Authors**

This updated comparative analysis was prepared by OESA in collaboration with Butzel, Attorneys and Counselors. Butzel is a leading legal advisor to automotive supplier companies worldwide. The Firm has broad experience pertinent to all aspects of the Supplier-to-OEM and Supplier-to-Supplier relationships.

Butzel's multi-disciplinary team of authors included Sheldon Klein, Cynthia Haffey, Dan Rustmann, James Bruno, Jennifer Dukarski, Mitchell Zajac, David Devine, Leslie Glick, Javon David, Steven Eatherly, and Louis Ronayne.<sup>2</sup> (OESA gratefully acknowledges the work of those who authored early versions of this analysis, from which this version has evolved.)

## **Format and Use**

In each Section, there is a Context and Questions introduction, which synthesizes the key points and considerations relevant to that Section. It is followed by a Comparative Analysis, which summarizes the main points of each OEM's Terms and Conditions with regard to each subject matter. Certain summary points include brief comments, indicated by a flag (℞) symbol, that identify distinctive or potentially problematic aspects of particular terms.

Many sections include a "Dashboard." The purpose of the Dashboard is to provide a simple, high-level comparison among the OEM and OESA Terms and Conditions. The Dashboard frames the topics as simplified questions, which are answered Yes (Y), No (N) or Silent (S) for each OEM. "Yes" indicates that there is an expressed provision responding affirmatively. "No" indicates that there is an expressed provision responding negatively. "Silent" indicates that there is no expressed provision. "Silent" is used because there may be a default rule of law under the UCC or other applicable rules of law which addresses the issue in the absence of an agreement to the contrary. Because the Dashboard is necessarily simplified to make it useful for quick review, it should be used accordingly.

## **New for 2022**

Since the last edition of this analysis, FCA / Stellantis has issued extensively revised new Terms. This new edition reflects those changes. This new edition includes analyses of both the new and prior terms for two reasons. First, the prior terms will remain applicable *for POs arising out of RFQs issued before 1/1/2022*. Second, the FCA / Stellantis terms consist of two documents: (i) Stellantis' Global Terms and (ii) the 2021 FCA terms. Thus, the 2021 FCA Terms remain relevant even for POs arising out of RFQs issued after 1/1/2022.

This new edition also includes for the first time Lucid's terms of purchase.

Finally, this new edition includes a copy and analysis of OESA's updated (2022) Model Terms and Conditions.

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<sup>2</sup> Additional information regarding the authors, and the Butzel firm, may be found at [www.butzel.com](http://www.butzel.com). The Firm maintains a section pertinent to Supplier issues at <http://www.butzel.com/terms-and-conditions>. Butzel and its automotive team may also be contacted at 313.225.7000.

## **Limitations**

This analysis is a summary of the documents described above and is necessarily limited solely to those documents. As referenced in this analysis and highlighted in Appendix A, many of the documents analyzed in this comparative analysis reference and incorporate other documents, laws and industry standards that contain additional terms and requirements which the OEMs assert are part of the contract between the OEM and Supplier. Although some are referenced in summary fashion, these additional documents and laws are not reviewed in this analysis. This comparative analysis cannot, therefore, be used as the “last word” on a topic, especially with regard to those topics (such as quality) addressed in multiple contract documents. Suppliers must also be mindful that a topic addressed in an OEM’s general Terms and Conditions might also be addressed differently on the face of the associated Purchase Order or in its other contract documents. For that reason, Suppliers should review all applicable contract documents in their entirety (as well as any applicable laws) with competent counsel in order to obtain a complete understanding of the Terms and Conditions governing its relationship with their particular OEM. The Supplier must regularly monitor changes to the OEM contract documents, which have become more frequent in recent years. OEMs typically reserve the right to change various contract documents at any time and often without notice. They have also increasingly relied on Suppliers to locate and review documents through online portals and may not communicate changes via traditional methods, such as hard copy or email.

***OESA, its counsel, individual member companies, their representatives, and attorneys assisting with this project do not warrant the accuracy or completeness of this analysis. This analysis is not intended to provide legal advice and should not be relied upon for that purpose. A Supplier should consult legal counsel about specific legal issues arising from its relationship with the OEMs.***

Please email suggestions, comments and questions to OESA at [info@oesa.org](mailto:info@oesa.org) or address them to OESA at 25925 Telegraph Road, Ste. 350, Southfield, MI 48033. Electronic copies are available to OESA members. Ordering information may be found under the Publications section at <https://www.oesa.org/>.

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As a matter of policy, OESA does not furnish copies of OEM Terms and Conditions or other contract documents.

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*Appendix A – Documents Referenced in OEM Terms and Conditions*

*Appendix B – 2022 Original Equipment Suppliers Association Model General Terms and Conditions*

*Supplement – General Motors General Terms and Conditions for Collaborative Contract Management for Global Emerging Market (GEM) Programs*



## **PART ONE**

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## **I. Contract Formation – Context and Questions**

### **1. Not a “Legal Technicality”**

When auto industry disputes wind up in court, more often than not, the dispute centers on what documents make up the contract, rather than what those documents mean. For example, a Supplier’s bid may condition its price quote on volume and raw material assumptions. When volumes disappoint and raw material prices soar, the Supplier’s right to relief may be determined by whether the bid is part of the contract and, as many Suppliers have painfully learned, if the Supplier did not make the bid part of the production Purchase Order, the answer may be unsettled and the risks high.

This means that Suppliers must understand that contract formation is not a legal technicality. Once the contract is formed, it is often too late for the Supplier to protect itself. The lesson is clear: If an assumption, past practice, understanding, or document is critical to the Supplier, the Supplier should do all that it can to see that it is specifically included in the contract.

### **2. Lack of Actual Agreement = Uncertainty**

All OEMs attempt to say, in varying ways, that the goods are sold on their terms, and only their terms, as stated in the OEM’s Purchase Order and standard Terms and Conditions, regardless of whether the Supplier expressly agreed to the terms, objected to the terms, or proposed different terms. Despite the OEM’s endeavor to have its terms control, when the OEM and Supplier do not expressly agree on the terms, and particularly when they exchange conflicting terms, there is room for uncertainty and argument as to the actual terms of the parties’ agreement. As stated in the leading treatise:

*[T]here is no language that a lawyer can put on a form that will always assure the client of forming a contract on the client’s own terms. . . . [T]he only answer may be to raise the price, buy insurance, or—as a last resort---have an extra martini every evening and do not capitalize the corporation too heavily.<sup>3</sup>*

### **3. Battle of the Forms Does Not Eliminate Uncertainty**

UCC 2-2074 provides rules for resolving these “battle of the forms” disputes.<sup>5</sup> Although extensive consideration of the nuances of UCC 2-207 is beyond the scope of this Comparative Analysis, it is indisputable that the rules are complex and often provide unclear or unsatisfactory answers. UCC 2-207 often turns on elusive questions, such as whether a particular communication is an offer, whether a Supplier’s response to a RFQ is a counter-offer, whether an offer (or counter-offer) is accepted by the issuance of a Purchase Order, or whether the

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<sup>3</sup> White and Summers, Uniform Commercial Code, Fourth Ed., §1-3, p. 31.

<sup>4</sup> UCC 2-207 states in part: Between merchants [additional or different] terms become part of the contract unless: (i) the offer expressly limits acceptance to the terms of the offer; (ii) they materially alter it; (iii) notification of objection to them has already been given or is given within a reasonable time after notice of them is received.

<sup>5</sup> It is notable that Toyota and VW’s standard terms expressly provide that UCC 2-207 does not apply. (See the comments to the Toyota terms regarding the possible effect of the exclusion of 2-207.)

Purchase Order is the offer that was accepted by performance.<sup>6</sup> There also remains the question of whether the differences in the response to the offer “materially alter” the offer. The battle of the form rules are highly technical and a Supplier should consider seeking legal advice as to how to most effectively wage the battle.

#### 4. **Acceptance**

A contract is formed, of course, when an offer is accepted. Acceptance is clearest when expressed in writing. Acceptance may also occur by performance or other acts. See UCC 2-204 (“A contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract”) and UCC 2-206 (generally allowing acceptance “in any manner ... reasonable in the circumstances ...”). Although written acceptance is not essential, whether conduct is sufficient for acceptance is often unclear. In general, the opportunity for a battle of the forms increases if the facts regarding acceptance are unclear and subject to dispute.

No OEM expressly limits acceptance to signature. The Nissan agreement includes a signature line and contemplate a written Supplier signature, although it does not require it. BMW requires the Supplier to provide a written acknowledgement, but also provides that performance will constitute acceptance.

#### 5. **Pre-Production Agreements**

The commercial agreements between Suppliers and OEMs typically do not begin with the production Purchase Order. Often there are RFQs, quotations, pre-production awards, and engineering and development agreements, for example, which often include terms that may be intended to be part of the parties’ production relationship. However, contractual merger and integration clauses (see Para 6 below) and related legal rules generally have the effect of extinguishing those prior agreements, unless the prior agreements are affirmatively preserved or incorporated in the parties’ Agreement.

Mercedes and VW explicitly acknowledge in their standard terms the existence of these types of prior agreements. Ford likewise acknowledges the existence of various types of prior agreements and addresses (in considerable and restrictive detail) whether and how the prior agreements become part of the production agreement. A Supplier should do its best to ensure that any commercial terms from earlier agreements that are intended to be part of the production agreement are preserved. Frequently, this is done by referencing the prior agreement in the production Purchase Order, such as “Subject to Program Award letter dated XXXX.” Although this can be effective, it creates a risk of confusion if only portions of the prior agreement were

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<sup>6</sup> See, e.g., *Plastech Engineered Products v Grand Haven Plastics, Inc.*, 2005 WL 736519, \*8 (Mich. Ct. App. 2005), which turned on the conclusion that the Supplier’s quotation was an offer and the subsequent Purchase Order accepted that offer and *Compass Automotive Group, LLC v. Denso Mfg. Tennessee, Inc.*, 2013 WL 655112 at \*3 (E.D. Mich. Feb. 22, 2013), holding that the supplier’s quotation was an offer and buyer’s subsequent purchase orders were acceptance of that offer. But see *Cadillac Rubber & Plastics, Inc. v. Tubular Metal Systems, LLC*, 331 Mich. App. 416, 425 (2000) (holding that the supplier was not required to separately sign the manufacturer’s terms and conditions of purchase for the offer to be enforceable).

intended to survive. Ideally, the relevant provisions should be specifically incorporated or repeated in the Purchase Order.

6. **Integration**

With the exception of BMW and Honda, all OEMs include an “integration clause” providing that the Agreement (as defined in the standard terms) is the parties’ complete agreement and any prior agreements are superseded.<sup>7</sup> The inclusion of an integration clause makes it considerably more difficult for the Supplier to argue that an unreferenced prior agreement was included in the Agreement.<sup>8</sup>

7. **Incorporation of Web Terms**

Increasingly, OEM terms include various documents that are posted on the OEM Supplier website and are incorporated by reference. For example, Ford expressly incorporates “Supplier Guides” covering matters such as packaging, shipping, service parts and obsolescence and BMW incorporates Group Standards. This analysis does not attempt to completely catalog or analyze all such incorporated terms. The Supplier must, however, take active steps to locate and understand the incorporated provisions.

8. **The OESA Alternative**

The OESA model terms take a substantially different approach than the OEM standard terms. They allow the Supplier to propose different or additional terms. Rather than rejecting these proposals outright (as most OEM forms do) or accepting them outright (as can occur under UCC 2-207), the OESA model terms generally require mutual agreement before the contract is formed.

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<sup>7</sup> As discussed below, the Honda terms contain some, but not all, of the features of a standard integration clause.

<sup>8</sup> See UCC 2-202 and *UAW-GM Human Resource Ctr v KSL Recreation Corp*, 228 Mich App 486; 579 NW2d 411 (1998) and *Barclae v Zarb*, 300 Mich App 455, 480, 834 NW2d 100, 117 (2013).

## I. Contract Formation – OEM Comparative Analysis

### 1. **BMW (2014)** (Sections 1.1, 1.2, 2.1 and 2.2):

- Agreement consists of: (i) Purchase Order; (ii) standard terms; and (iii) any applicable framework supply agreement.
- BMW uniquely does not include a separate “integration clause,” but § 2.1 does state that any additional or different Terms and Conditions are expressly excluded and are not part of the parties’ contract.

*☞ The lack of an integration clause increases the possibility of a court finding that a prior agreement is included in the Agreement. Nevertheless, a Supplier is at considerable risk if the prior agreement is not referenced in the Purchase Order.*

- Acceptance is by signed acknowledgment or by any “performance in relation to purchase order.”
- Supplier must give a written acknowledgement of acceptance within 14 working days after receipt of the Purchase Order. BMW may revoke a Purchase Order if not accepted (by acknowledgement or performance) within 14 working days.
- Acceptance is limited to the terms of the Purchase Order.
- Additional or different terms presented by Supplier are excluded.
- The Purchase Order will prevail over the Terms and Conditions in the event of a discrepancy, contradiction, or inconsistency.
- Each Purchase Order is a separate and individual Supply Contract.

### 2. **BMW (2018)** (Sections 1.1, 1.2, 2.1 and 2.2):

- No material change from 2014 except that
  - Acceptance by any “performance in relation to purchase order” is changed to Acceptance by “any act taken by Seller for the fulfillment of a Purchase Order.”

### 3. **FCA US (2021)** (Sections 1 and 2):

- Agreement consists of: (i) Purchase Order; (ii) standard terms; (iii) FCA US supplemental clauses that are referenced in the Purchase Order; and (iv) other documents referenced in the Purchase Order.

*☞ FCA US uniquely relies on incorporated standard clauses regarding basic terms. For example, other OEMs have a single standard termination provision in their standard terms, while FCA US maintains a menu of termination clauses in its Supplier Portal from which it picks and incorporates by reference for each Purchase Order. This “menu” approach leads to greater variability in FCA US contracts than other OEMs.*

☞ *Prior agreements will likely not be part of the Agreement unless referenced in the Purchase Order.*

- Acceptance is by signed acknowledgment (including electronic communication), by delivery of parts, rendering of services, or by commencement of work after Seller's receipt of the Order.
- Acceptance is limited to the terms of the Purchase Order.
- Additional or different terms presented by Supplier are rejected unless expressly agreed in writing and made part of the Purchase Order.
- The Purchase Order and any documents referenced in the Purchase Order constitute the entire agreement of the parties and supersede any prior or contemporaneous agreements.

4. **FCA US / Stellantis (2022)** (FCA US Sections 1 -2 and Stellantis Global Section 2):

- No material additions or changes from FCA 2021.

5. **Ford (2004)** (Sections 3, 4 and 5):

- The Agreement consists of: (i) the Purchase Order; (ii) the standard terms; (iii) all other types of agreements defined within the standard terms, such as Web Guides and Supplemental Terms and Conditions (posted on Ford's Supplier web portal); and (iv) "Earlier Agreements," such as Sourcing Agreements and Statements of Work.

☞ *Ford's terms are uniquely detailed as to the types of documents used by Ford in its production purchasing and their status in the Agreement. Ford also uses an elaborate and unusual nomenclature to describe and categorize the various documents used in purchasing activities. Careful attention to Section 2 and 4 may be required to determine whether and how a particular document fits into the Agreement.*

- Ford's Purchase Order is an offer by Ford. Acceptance is by notice of acceptance from Supplier or Supplier's commencement of work.
- Acceptance is limited to the terms of the Purchase Order. Any terms submitted by the Supplier are not part of the Agreement, and any Supplier quotation must be based on Ford's terms.
- Ford's standard terms and related "General Purchase Order" documents can be modified only through an elaborate procedure, including a formal Written Notice and written approval of Ford's Vice President-Global Purchasing.

☞ *Many commercial agreements can be interpreted to modify the standard terms. Since Ford's CPO typically will not sign a commercial agreement, this provision casts a cloud of legal uncertainty over many agreements with Ford.*

- Agreements regarding service and component parts must be approved by the "highest ranking executive of the activity responsible for purchasing those parts,"
- Earlier agreements (like a target agreement or technology agreement) will continue to apply. However, earlier agreements that modify the standard terms are subject to approval of Ford's Vice President-Global Purchasing.

- The Agreement is the entire agreement of the parties and supersedes any prior or contemporaneous agreements.

6. **Ford (2021)** (Sections 2, 3, and 4):

- Ford's 2021 Terms are materially unchanged except:
  - Section numbers have been changed
  - "Web Guides" are now "Supplier Guides."
  - Approvals which were previously required from Ford's Vice President-Global Purchasing now must be provided by Ford's Chief Procurement Officer.

7. **General Motors**<sup>9</sup> (Sections 1 and 2):

- The Agreement consists of: (i) Purchase Order; (ii) standard terms; and (iii) attachments, exhibits, supplements or other terms of Buyer specifically referenced.
  - ✍ *Prior agreements are likely not part of the Agreement unless referenced in the Purchase Order.*
- Acceptance is by written acceptance or commencement of any work or services under the Agreement.
- Acceptance is limited to the terms of the Agreement.
- The Agreement is the entire agreement of the parties and supersedes any prior or contemporaneous agreements.
- The Agreement may only be modified by a contract amendment issued by Buyer.
- Seller's differing or additional terms are rejected and Seller's acceptance is limited to GM's terms.

8. **Honda** (Sections 1, 14 and 15):

- Standard terms are called the "Master Agreement" with Purchase Order issued under the Master Agreement.
- The Agreement consists of the Terms and Conditions and any additional agreements referenced in the Terms and Conditions.
- The Terms and Conditions apply to any PO, including those POs placed before the effective date of these Terms and Conditions. If the Terms and Conditions are later modified by Honda, the most recent modified version will apply to any PO made after its effective date.
- The order of precedence of documents is: (i) any applicable Master Agreement; (ii) the applicable Order; (iii) additional documents comprising the Order; (iv) the Terms and Conditions; (v) the Purchase Order; and (vi) other additional documents.
- Supplier must also comply with Honda's "reasonable corporate policies."

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<sup>9</sup> General Motors' 2014 terms apply to RFPs issued after July 15, 2013.

- Each Purchase Order is a separate offer that, when accepted, results in a separate Agreement.
- Acceptance of a Purchase Order occurs by: (i) written acceptance; (ii) acceptance via an electronic transmission; (iii) shipment or other performance; or (iv) failure to object to an order within 5 business days of issuance.

*➤ This “failure to object” means acceptance provision creates both risks and potential benefits for the Supplier. The risk is that it may increase the likelihood that silence will be treated as acceptance. The benefit is that a Supplier who does timely object may be in a stronger position to argue that as a result of its objection, its performance should not be construed as acceptance.*

- The Agreement is the exclusive and entire Agreement and supersedes all prior agreements between the parties pertaining to the subject matter. A Purchase Order may override the Agreement if it expressly references the Terms and Conditions and the specific provision being overridden and the document is executed by Honda.

9. **Hyundai** (Sections 1 and 2):

- Agreement consists of: (i) Purchase Order; (ii) standard terms; and (iii) any signed document referenced in the Purchase Order.

*➤ Prior agreements are likely not part of the Agreement unless referenced in the Purchase Order.*

- The Purchase Order is an offer that is not binding until accepted by Supplier.
- Acceptance is by signed acknowledgment, by shipment of parts, or by other commencement of work.
- Acceptance is limited to the terms of the Purchase Order.
- Additional or different terms presented by Supplier are rejected unless expressly agreed.
- The battle of the forms provisions of §2-207 shall not apply.

*➤ See comment below regarding similar Toyota provision.*

- The Agreement is the entire agreement and supersedes any prior or contemporaneous agreements.

10. **Kia** (Sections 1 and 2):

- Same as Hyundai.
- Unlike Hyundai, Kia’s incorporated documents include an Acceptance/Burden Ratio Agreement (relating to Supplier’s warranty cost-sharing obligations).

11. **Lucid** (Sections 1.1,1.2,1.3,23.7,23.10 and Schedule 1):

- All Orders are an offer by Lucid for the purchase of Goods or Services specified on the Order.
- Acceptance occurs on the earliest of: (i) Supplier commences work to provide the Goods or Services; (ii) Supplier submits an invoice conforming to the terms of the Order; (iii)



Supplier submits an advance shipment notification or other evidence that it intends to supply the Goods or Services; (iv) Supplier provides written acceptance of an Order (which may be by electronic means); or (v) Supplier fails to object within five (5) business days after Lucid sends the Order.

- If Supplier cannot accept an Order, it must notify Lucid and propose alternative terms. If the terms are acceptable to Lucid a revised Order will be issued.
- Lucid's Orders are limited to the terms of each Order and all other terms are rejected. Lucid's General Terms and Conditions ("GTC") are notice of Lucid's rejection of any different or additional terms.
- The parties' Agreement is compromised collectively of Lucid's GTC and all documents, exhibits, schedules incorporating the GTC.
- If there is a conflict between the documents, the order of precedence is: (i) the applicable Order; (ii) the GTC; (iii) any other exhibits or attachments to the GTC, including any SOW, except that the terms of the GTC regarding Warranty (Section 6), Confidentiality (Section 12) and Intellectual Property (Section 17) shall prevail over the terms of any other document.

12. **Mercedes-Benz U.S. International, Inc. ("MBUSI")** (Sections 1.1 (b), (g), (i), (o), (u) and (oo), 2.1, 2.3, 9.1, and 9.2):

- The Agreement consists of: (i) Purchase Order; (ii) Standard Terms and attachments, including MBUSI's Quality Manual; (iii) any "Development Agreement" (relating to pre-production development); and (iv) any "Source Package" issued by MBUSI (generally consisting of the RFQ and related materials).
- The Master Terms and the Agreement are accepted on the earlier of: (1) written, telecopied or electronic acceptant, whether through MBUSI's Supplier Portal or otherwise; (2) Supplier's first shipment or other commencement of performance under a Purchase Order, or (3) submission of a bid or quote in response to Source Package. The parties agree that the orders, decisions and commitments communicated over MBUSI EDI system and the eDocs system shall be binding and legally valid. Supplier shall only grant employees and agents entitle to submit legally binding declarations of intent, offers and acceptance that are legally binding on Supplier.
- All offers, acceptances and communications communicated via the EDQ and eDocs systems shall be recorded and stored. This record shall be used exclusively as evidence of the content and the fact that a party submitted a legally binding offer, acceptance or declaration of intent.
- Acceptance is limited to the terms of the Agreement Documents. Agreement is defined as the entire agreement between MBUSI and the Supplier represented by the Agreement Documents, which may be modified, amended and supplemented or restated from time to time.
- Additional or different terms presented by Supplier are rejected unless expressly agreed.
- The Agreement is the entire agreement and supersedes any prior or contemporaneous agreements.

- Supplier is obligated to accept each Purchase Order issued in accordance with the Agreement Documents.

13. **Nissan** (Sections 1.1, 2.1 and 29):

- The standard terms are considered the “Master Agreement” with Purchase Orders issued under the Master Agreement.
- The Agreement consists of the Master Agreement and the underlying Purchase Order.

*☞ Prior agreements are likely not part of Agreement unless referenced in the Purchase Order.*

- The contract is the entire agreement and supersedes all prior agreements and understandings.
- The terms of the Agreement prevail over the terms in any other document or agreement.
- The standard terms contemplate Supplier signing the Master Agreement. No other means of acceptance (including performance) is expressly provided. No means for accepting or rejecting individual Purchase Orders are specified.

*☞ Acceptance by performance is nevertheless likely applicable under UCC 2-204 and 2-206.*

14. **Rivian** (Sections 1.1 and 39.6):

- The terms of all Purchase Orders, Rivian’s Terms and Conditions, all other applicable agreements, including Development, Production, and Supply Agreements, and all attachments referenced in them, such as Specifications and Releases, pricing agreements, statements of work, and any other written agreements provided that such are signed by authorized representatives of both parties collectively make up the contract.
- Seller is obligated to accept any Purchase Order that conforms to the terms of a mutually executed written agreement, including Development, Production, and Supply Agreements.
- Acceptance is by (i) written acceptance, (ii) shipment of Goods, performance of services, or commencement of work on Goods, or (iii) any other conduct of Seller that recognizes the existence of a contract pertaining to the subject matter.
- Acceptance of a Purchase Order will also occur if Seller fails to object to the order prior to 5 days from receipt of the order.
- Any terms that modify, supersede, supplement or otherwise alter Rivian’s terms and conditions are expressly rejected unless otherwise agreed in writing.
- All Supplier offers are expressly rejected.
- The order of precedent of documents: a) Purchase Order amendment, b) Purchase Order, c) a production supply agreement or other written agreement between the parties, and d) Rivian terms and conditions.

15. **Toyota (2009)** (Sections 1.1, 1.4, 7.1, 7.5 and 7.6):

- The Agreement consists of: (i) the Purchase Order; (ii) the standard terms; and (iii) the “Contract Documents.” “Contract Documents” is defined as any documents designated by

Toyota in its sole discretion and subject to change by Toyota at any time in its sole discretion. Contract Documents include Purchase Order specific documents, such as releases and specifications, and general documents, such as quality manuals, as well as every good faith agreement and form in Toyota's Supplier portal.

✎ *The extraordinarily broad and vague definition of Contract Documents and the broad discretion given to Toyota to specify and change those documents may give rise to a non-trivial challenge to Toyota's terms as illusory or void for indefiniteness in certain circumstances. However, Toyota would likely argue that its discretion is subject to express and implied good faith obligations and that its discretionary rights are therefore enforceable.*

✎ *The limitation of Contract Documents to those designated by Toyota makes it particularly important that any terms or prior agreements the Supplier intends to include be specified or referenced in the Purchase Order.*

- The Agreement is accepted by the Supplier's commencing performance, submitting an invoice, or other acts.

✎ *Toyota uniquely states that it does not contemplate an actual signature from Supplier.*

- Toyota's terms expressly provide that "the battle of the forms sections of § 2-207 ... shall not apply..."

✎ *This language may not eliminate the battle of the forms, as the court must first determine that the Supplier agreed that 2-207 does not apply, and that determination may require a battle of the forms analysis.*

- If any inconsistency arises among the various documents issued by Toyota relating to the sale of parts, the Terms and Conditions of the Master Agreement will control. The Agreement constitutes the entire agreement of the parties and supersedes all prior agreements.

16. **Toyota (2021)** (Sections 2.2, 2.3, 8.2, 8.6, and 8.7):

- Other than section numbering, material changes are as follows:
- 2021 Terms are effective as to any items delivered on or after 10/1/21, not just as to purchase orders accepted after the effective date.
- Replace the penultimate 2009 bullet with: If there is an inconsistency between different contractual documents, "Specific Contract Documents" have priority over the new Terms and the new Terms have priority over "Generic Contract Documents."

17. **Volkswagen** (Sections 1, 2, 13, 42 and 44):

- The Agreement consists of: (i) the Purchase Order; (ii) exhibits, attachments and documents specifically referenced in the Purchase Order; (iii) the standard terms; (iv) Supplier requirements posted on VW's Supplier web portal (such as labeling, packaging and quality), as revised by VW from time to time; (v) documents provided by Buyer with the request for quote for the Supplies, including but not limited to, the drawings, data,

technical information and statement of work; (vi) prior agreements signed by an authorized representative of VW (but excluding prior purchase orders), such as a nomination letter or Non-Disclosure Agreement; (vii) Material Releases; and Buyer and Volkswagen Group Standards for Sustainable Development, which are incorporated into the standard terms. Any reference to a Supplier quotation, or similar document, is strictly to incorporate the specifications, and no other terms.

☞ *Properly authorized award letters, SOWs, etc., should be covered under this provision. It is nevertheless prudent to specifically identify surviving agreements in the Purchase Order.*

- Any modification to the standard terms must be expressly stated in the Purchase Order.
- The Purchase Order is an offer, which is accepted by: (i) commencing any work; (ii) a written acceptance; (iii) an electronic acceptance; or (iv) any other conduct that recognizes the contract.
- Acceptance is limited to VW's terms, and any Supplier terms are rejected.
- In the event of a conflict, the electronic Nomination Agreement shall take precedence over the standard terms, the standard terms shall take precedence over a Purchase Order, and the Purchase Order shall take precedence over the RFQ Documents. The final document in order of precedence shall be the submitted response or bid of the Supplier.
- Standard terms prevail over any inconsistent term in Supplier's invoices, etc.
- The battle of the forms provisions of 2-207 shall not apply to the Order or these Terms or to any invoice or acceptance form of Seller relating to the Order.

☞ *See comment above regarding similar Toyota provision.*

- The Agreement constitutes the entire agreement of the parties and supersedes all prior agreements.
- Supplier shall be responsible for reviewing VW's website periodically for the most current version of the standard terms and any other applicable requirements of VW regarding the Purchase Order. In the event of any inconsistency between the Purchase Order and Buyer's website, the terms of the Purchase Order shall prevail, unless the requirements specified on Buyer's website provide otherwise.

☞ *Note that this provision arguably conflicts with the order of precedence provisions set forth in Section 2.*

18. **Volvo** (Sections 1.1, 2.3, 3 and 4.2):

- Volvo's contracts can be any one of the following: (a) a Blanket Purchase Order which is used for the purchase of goods for serial production and service parts; (b) a Framework Purchase Agreement which is an agreement that establishes the general terms applicable to Volvo's purchase of goods and under which there may be several Purchase Agreements; (c) Lump-Sum Purchase Order which is used for prototype good and tooling; (d) a Purchase Agreement which is an agreement for the purchase of goods; and (e) Purchase Order which is the instrument that contains either a Blanket Purchase Order or a Lump-Sum Purchase Order.

- General Purchase Agreement Documents are Volvo terms and conditions, any Supplement term and conditions and Volvo Car instructions.
- Issuing a purchase order is the offer by Volvo to purchase goods. A blanket purchase order constitutes an offer to purchase goods if a “Call-Off” is issued. In the case of a blanket purchase order, the first Call-Off under a blanket purchase order is the offer.
- Acceptance occurs when (i) the Supplier begins work or performance pursuant to the offer, (ii) the date on which Volvo receives Supplier’s notice of acceptance, or (iii) twenty (20) working days from the date of issue of the offer, unless Supplier’s written objection has been received by Volvo beforehand.
- The Purchase Agreement goes into effect on the date stated on the relevant purchase order and is valid until terminated.
- The following documents and terms are incorporated into the purchase agreement: (i) appendices to the Framework Purchase Agreement; (ii) Volvo’s Production Material Global Terms and Conditions; (iii) any Supplemental Terms and Conditions referenced in any of the incorporated documents; (iv) the documents and their terms referenced, such as the Code of Conduct, Purchase Orders, Call offs, and Technical Specifications.
- Each Purchase Agreement is a stand-alone agreement.
- Volvo may contract with others to provide goods or services the same as, or similar to, the Goods.
- No terms in Supplier’s quotation, acknowledgment, confirmation, Call-Off, invoice, specification or similar document form any part of the Purchase Agreement and Supplier waives any right to rely on their terms.

19. **OESA** (Sections 2.1, 2.2 and 2.3):

- The Purchase Order is an offer to contract that includes the OESA model terms and any other documents incorporated in the Purchase Order.
- No other documents or agreements are part of the contract.
- Acceptance is by signed acknowledgment or if Supplier fails to object within 10 days and begins or continues shipping parts.
- If Supplier timely objects to a Purchase Order or proposes alternate or additional terms, no contract is formed unless and until the parties agree on terms, unless the parties have commenced delivery, a contract will be formed and the terms will be determined in accordance with Section 2-207 of the UCC (Battle of the Forms).
- Specific terms on the Purchase Order and other incorporated documents take priority over any inconsistent provisions in the model terms.

## I. Contract Formation – Dashboard

Specific Provisions Provided in Terms and Conditions	BMW 2014	BMW 2018	FCA US 2021	FCA/Stellantis 2022	Ford 2004	Ford 2021	GM	Honda	Hyundai	Kia	Lucid	MBUSI	Nissan	Rivian	Toyota 2009	Toyota 2021	VW	Volvo	OESA
UCC 2-207 (Battle of the Forms) expressly disclaimed	N	N	N	N	N	N	N	N	N	N	N	N	N	N	Y	Y	Y	N	N
Performance = acceptance	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y <sup>(b)</sup>
Supplier failure to promptly object = acceptance	N	N	N	N	N	N	N	Y	N	N	Y	N	N	Y	N	N	N	Y	Y <sup>(a)</sup>
Supplier signature expressly required for contract	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	Y	N	Y
Supplier terms rejected/excluded	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Particular signatures of OEM executives required for effective modification?	N	N	N	N	Y	Y	N	N	N	N	N	N	N	N	N	N	N	N	N
Agreement (as defined in terms) is the complete and exclusive agreement	S	S	Y	Y	Y	Y	Y	Y	Y	Y	S	Y	Y	Y	Y	Y	Y	Y	Y
Agreement (as defined in terms) expressly supersedes all prior agreements	S	S	Y	Y	Y	Y	Y	S	Y	Y	S	Y	Y	Y	Y	Y	Y <sup>(c)</sup>	Y	Y
<b>General Notes</b>																			
1. The Dashboard is intended to provide a simple, high-level comparison among the OEM and OESA Terms and Conditions on certain basic issues. It is necessarily over-simplified, omitting limitations, exceptions and nuanced distinctions regarding the contract terms, and it should be used accordingly.																			
2. For each question or statement, the response is either Yes (“Y”), No (“N”) or Silent (“S”). “Yes” indicates that there is an express provision responding affirmatively. “No” indicates that there is an express provision responding negatively. “Silent” indicates that there is no express provision and that there may be a default rule of law under the UCC or other applicable rules of law which provide for the right in the absence of an agreement to the contrary.																			
3. All Terms and Conditions of Purchase provisions have to be construed in light of the UCC and other law which may provide a “gap filler” term or a gloss on an express contract term.																			
<b>Specific Notes</b>																			
(a) If combined with commencement of performance.																			
(b) Unless objected to within 10 days.																			
(c) Documents provided by Buyer with the request for quote, the nomination letter, and other prior agreements such as Non-Disclosure Agreements signed by an authorized representative of Buyer shall continue to apply.																			